

FILED

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

BRIAN JAMES AZURE,)	CV 09-72-M-DWM-JCL
)	
Petitioner,)	
)	
vs.)	ORDER
)	
MONTANA STATE PRISON WARDEN)	
MIKE MAHONEY; ATTORNEY)	
GENERAL OF THE STATE OF)	
MONTANA,)	
)	
Respondents.)	
)	

Petitioner Azure has filed a Petition for Writ of Habeas Corpus challenging his conviction for failure to register as a violent offender. Azure is currently serving a five-year state prison sentence as a result of that conviction.

United States Magistrate Judge Jeremiah C. Lynch conducted preliminary screening of the Petition as required by Rule 4 of the Rules Governing Section 2254 cases in the United States District Courts. Under Rule 4, the Petition must be summarily dismissed “[i]f it plainly appears from the face of the petition and any attached exhibits that the petitioner is not entitled to relief in the District Court.” If summary dismissal is not warranted, the judge must order the respondent to file an answer, motion, or other response or to take some other action as ordered by the judge.

Judge Lynch recommends dismissal of the Petition on the merits because it is clear that Azure is not entitled to relief on any of his claims. Judge Lynch explained that Azure’s claims fail because 1) Montana law places the responsibility to report a change of address on the offender, not the supervising agency; 2) informal meetings between parole officers and offenders under supervision are not subject to Miranda v. Arizona, 384 U.S. 436 (1966), so it was not necessary for Azure’s parole officer to Mirandize him in order for Azure’s statements to the officer to be admitted at trial; and 3) failure to register is a criminal offense under Montana law, not a civil offense.

Because he concludes that Petitioner is not entitled to relief, Judge Lynch recommends denial of the Petition and denial of a certificate of appealability. Petitioner did not timely object and so has waived the right to de novo review of

the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000). I can find no clear error with Judge Lynch’s Findings and Recommendations and therefore adopt them in full.

Accordingly, IT IS HEREBY ORDERED that the Petition is DENIED on the merits, and a certificate of appealability is DENIED. The Clerk of Court shall enter judgment by separate document in favor of Respondents and against Petitioner Azure.

DATED this 8th day of September, 2009.


Donald W. Molloy, District Judge
United States District Court